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## **OLR Bill Analysis**

### **sHB 6437 (as amended by House “A” and “C”)\***

#### ***AN ACT CONCERNING A MATTRESS STEWARDSHIP PROGRAM.***

#### **SUMMARY:**

This bill establishes a mattress stewardship program to manage discarded mattresses. It requires mattress producers, or their designees, to join a nonprofit mattress recycling council that they, or a trade association representing them, establish. It prohibits producers who fail to participate in the program from selling mattresses in Connecticut.

The council must develop a plan to, among other things, minimize public sector involvement in managing discarded mattresses. The plan must be submitted to the Department of Energy and Environmental Protection (DEEP) for approval. The program is funded through a fee on all mattresses sold in the state. The fee and any proposed change to it is reviewed by an auditor.

The bill allows the DEEP commissioner to civilly enforce the program’s requirements, establishes reporting requirements, and provides immunity to producers and the council from claims of antitrust or unfair trade practice violations under certain circumstances. It also allows the council to collaborate with another state which has a mattress recycling program.

Under the bill, the program’s preferred disposal method is recycling if it is technologically feasible and economically practical.

\*House Amendment “A” removes the requirement that the DEEP commissioner approve the program’s performance goals.

\*House Amendment “C” allows for producer’s designees to join the recycling council and requires the program to establish a financial

incentive for consumers who recycle mattresses according to the program's requirements if it is technologically feasible and economically practical.

EFFECTIVE DATE: October 1, 2013, except the covered entity fee provision is effective July 1, 2014.

### **MATTRESS PRODUCERS**

The bill applies to "producers" (manufacturers or renovators) of mattresses sold, offered for sale, or distributed in Connecticut under the producer's own name or brand. It includes (1) the owner of a trademark or brand under which a mattress is sold, offered for sale, or distributed in the state and (2) any person who imports a mattress into the United States that is sold or offered for sale in Connecticut and manufactured or renovated by a person without a United States presence. The bill defines "renovator" as a person who alters discarded mattresses for resale to consumers by replacing the ticking (outermost fabric or material layer) or filling, adding filling, or replacing components. A "brand" is a name, symbol, word, or mark that attributes a mattress to its producer.

Under the bill, a "mattress" is any resilient material or combination of materials enclosed by a ticking, used alone or with other products, and intended or promoted for sleeping upon. It includes (1) ticking-covered structures used to support the mattress composed of a constructed frame, foam, or box spring (a "foundation") and (2) any renovated mattress. But it does not include any mattress pad, mattress topper, sleeping bag, pillow, car bed, carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper, or certain water beds, air mattresses, and upholstered furniture.

A "sale" is the transfer of title of a mattress for consideration, including through a sales outlet, catalog, or website or similar electronic means.

### **PROGRAM PURPOSES AND ESTABLISHMENT**

By July 1, 2014, the bill requires producers, or their designees, to join

the mattress recycling council. The council is a nonprofit organization to design, submit, and implement the mattress stewardship program. It is created by the producers or any trade association that represents the producers that account for the majority of U.S. mattress production. The bill allows retailers to participate in the council.

By the same date, the mattress recycling council must submit a plan to establish a statewide mattress stewardship program to the DEEP commissioner for approval.

The bill requires the council's fee structure to cover but not exceed the costs of (1) developing the plan, (2) operating and administering the program, and (3) maintaining a sufficient financial reserve to operate the program in a fiscally prudent and responsible manner over a multi-year period.

The mattress stewardship program must (1) minimize public sector involvement in managing discarded mattresses, (2) include a mattress stewardship fee that is sufficient to cover the program's operating and administrative costs, and (3) establish a financial incentive that provides for payment of a monetary sum set by the council to consumers who recycle mattresses according to the program's requirements. It must also provide:

1. free, convenient, and accessible statewide opportunities for receiving discarded mattresses from any person with a mattress that was discarded in Connecticut, including (a) participating covered entities (see below) with at least 50 mattresses and (b) municipal transfer stations that discard at least 30 mattresses at a time;
2. free collection of discarded mattresses from municipal transfer stations that accumulate and segregate fewer than 30 mattresses and need collection due to space or permit requirements;
3. council-financed end-of-life management for collected discarded mattresses; and

4. suitable storage containers, or some other mutually agreed-to storage and transport arrangement, at permitted municipal transfer stations for segregated, discarded mattresses, at no cost if the transfer stations make space available and charge no fee.

The program must do these things to the extent they are technologically feasible and economically practical.

Under the bill, a “discarded mattress” is a mattress a consumer discarded, intends to discard, or abandoned.

#### **PLAN COMPONENTS**

The council’s plan must:

1. identify each participating producer,
2. describe the program’s fee structure,
3. establish performance goals for the program’s first two years,
4. identify proposed facilities for the program,
5. detail the program’s plans to promote recycling of discarded mattresses, and
6. describe its public education program.

Under the bill, a “performance goal” is a council-proposed metric to annually measure the program’s performance. It must consider technical and economic feasibility of achieving continuous and meaningful improvement in (1) the state’s mattress recycling rate and (2) any other specified goal.

#### **PLAN APPROVAL AND IMPLEMENTATION**

The bill requires the DEEP commissioner to approve the plan if it meets the bill’s program and plan requirements. He must determine whether to approve the plan within 90 days after its submission. The commissioner must post the plan on DEEP’s website and solicit public comments before deciding whether to approve it. The bill specifies that

the solicitation is not conducted according to the Uniform Administrative Procedure Act.

If the plan is not approved, the commissioner must provide the council with a notice of determination describing the reasons for disapproval. The council must revise and resubmit the plan within 45 days after receiving the disapproval notice. The commissioner must review and either approve or disapprove the revised plan within 45 days after receiving it and provide a notice of determination to the council. The bill restricts resubmitting a revised plan for approval to no more than two occasions. It requires the commissioner to modify and approve a submitted plan to make it conform with the program and plan requirements if the council fails to provide an acceptable plan.

The bill requires the council to implement the mattress stewardship program within (1) 120 days after plan approval or (2) 180 days after a DEEP modified plan is approved.

#### **CHANGES TO THE PLAN**

The bill requires the council to submit proposed substantial changes to the program to the DEEP commissioner for approval. Under the bill, a “substantial change” is a (1) change in the processing facilities used for the collected mattresses or (2) material change to the system for collecting mattresses. The proposed substantial change is deemed approved unless the commissioner disapproves it within 90 days after receiving notice of the change.

The bill also requires the council to notify the commissioner of other material program changes on a continual basis and without resubmitting the plan for approval. These changes include a change in the council’s (1) composition, (2) officers, or (3) contact information.

By October 1, 2016, the council must submit to the commissioner updated performance goals based on the program’s experience during its first two years.

#### **FUNDING**

By July 1, 2014 and biennially thereafter, the council must propose a mattress stewardship fee for all mattresses sold in Connecticut except crib and bassinette mattresses. The bill authorizes the council to propose a fee change more often if necessary to avoid a funding shortfall or excess.

The bill requires a proposed fee to be reviewed by an auditor to assure that it does not exceed the costs of (1) the program and (2) maintaining sufficient financial reserves to operate the program in a fiscally prudent and responsible manner over a multi-year period. It requires the council to select the auditor. The cost of the auditor's work is funded by the stewardship fee.

Within 60 days after the council proposes the fee, the auditor must give an opinion to the DEEP commissioner on the reasonableness of the fee to achieve the program's goals. If the auditor concludes the fee is reasonable, the proposed fee goes into effect. But if the fee is unreasonable, the auditor must notify the council in writing explaining his or her opinion. Within 14 days after receiving the notice, the council may (1) propose a new fee or (2) provide written comments on the opinion. The commissioner must then determine if the proposed fee should be approved based on the auditor's opinion and comments from the council.

Beginning on the program's implementation date, the fee must be added to the cost of all mattresses sold by producers to retailers and distributors in Connecticut. Each retailer and distributor must add the fee amount to the purchase price of all mattresses sold in the state. The fee, and a brief description of it, must appear on each invoice.

The bill authorizes the council to establish an alternative, practicable way of collecting or remitting the fee if DEEP approves.

## **PROGRAM AUDIT**

Two years after program implementation, and then every three years, the council must pay for a program audit. The audit must (1) review the accuracy of the council's program data and (2) provide any

other information requested by the DEEP commissioner but not any proprietary information or trade or business secrets. The bill allows the commissioner to request an audit no more than once per year.

The bill requires the council to maintain all program records for at least three years.

### **MATTRESS COLLECTION FEES**

When the program is implemented, any participating “covered entity” is prohibited from charging for the receipt of mattresses discarded in Connecticut, but allowed to charge a fee for the service of collecting mattresses. It allows them to refuse mattresses by number, source, or physical condition.

Under the bill, a “covered entity” is an entity that possesses a mattress discarded in Connecticut. It includes a political subdivision of the state; mattress retailer; permitted transfer station; military base; commercial or nonprofit lodging establishment; or waste-to-energy, health care, education, or correctional facility. It excludes renovators, refurbishers, and people who only transport discarded mattresses.

### **CIVIL PENALTIES**

The bill authorizes the DEEP commissioner to enforce the program’s requirements under his existing authority.

It allows the commissioner to ask the attorney general to bring an action for injunctive relief in New Britain Superior Court if he believes that a person has engaged in, or is about to engage in, any act, practice, or omission that violates the program’s requirements. It permits the court to issue a permanent or temporary injunction, restraining order, or other appropriate order, including taking remedial measures and directing compliance.

The bill requires that such actions by the attorney general take precedence over other actions in the order of trial.

### **LIABILITY PROTECTION**

Under the bill, to the extent a producer or the council is exercising

authority according to the bill's provisions, it is immune from liability for any antitrust or unfair trade practice claim based on a violation of antitrust law.

## **REPORTS**

Annually by October 15, the council must submit a report to the DEEP commissioner on a form he prescribes. DEEP must post the report on its website. The report must include the:

1. tonnage of mattresses collected from municipal transfer stations, retailers, and other covered entities;
2. tonnage of mattresses diverted for recycling;
3. weight of mattress materials recycled, by the weight of each commodity sold to secondary markets; and
4. weight of mattress materials sent for disposal to waste-to-energy facilities, landfills, and other facilities.

It must also include (1) a summary of the program's public education efforts, (2) an evaluation of methods and processes used to achieve program performance goals, and (3) recommendations for program changes.

Within three years after the plan's approval, the commissioner must submit a report to the Environment Committee that evaluates the program. The report also must establish goals for the (1) number of discarded mattresses managed by the program and (2) recycling of such mattresses, considering technical and economic feasibility.

## **INTERSTATE COLLABORATION**

The bill allows the council to collaborate with another state that implements a mattress recycling program to conserve efforts and resources, but the collaboration must be consistent with the bill's requirements.

## **COMMITTEE ACTION**

Environment Committee



Joint Favorable Substitute

Yea 23 Nay 5 (03/18/2013)

Judiciary Committee

Joint Favorable

Yea 33 Nay 9 (04/24/2013)